



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Alcoholic Beverage Control Board
<b>Virginia Administrative Code (VAC) citation</b>	3 VAC 5 -30
<b>Regulation title</b>	Tied-House
<b>Action title</b>	Tied-House Revisions
<b>Document preparation date</b>	September 12, 2003

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

This action implements several recommendations arising out of the periodic review process. The tied-house regulations place limitations on gifts or free services which may be provided by alcoholic beverage wholesalers and manufacturers to retailers of their products, in order to maintain the "reasonable separation" of retailer interests from those of manufacturers and wholesalers required by Sections 4.1-111 and 4.1-216 of the Code of Virginia. The proposed amendments to the current regulations will lessen some of the restrictions on manufacturers' and wholesalers' merchandising and promotional activities aimed at their retail customers.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Section 4.1-111, subsection B. 3., mandates that the Alcoholic Beverage Control Board promulgate regulations which: "Maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions." This chapter seeks to carry out this mandate by limiting the things of value which may be provided by manufacturers and wholesalers of alcoholic beverages to retailers.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.*

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The goal of this regulation is to promote the public health, safety, and welfare by maintaining the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers. The Board has determined that the regulation is essential to comply with the mandate of Section 4.1-111 and to protect the health, safety and welfare of the citizens by reducing the pressure on retailers to promote excessive consumption of alcoholic beverages which can be caused by the undue influence of manufacturers and wholesalers. The proposal is intended to liberalize the restrictions slightly to recognize the increases in costs of service items and business entertainment since the regulation was last modified, and to remove the restriction on Sunday merchandising, recognizing that most retail businesses now operate seven days a week.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

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In 3 VAC 5-30-10, the restriction on Sunday merchandising activities will be eliminated, except in jurisdictions where local ordinances restrict Sunday sales of alcoholic beverages, and in subsection B.3.g., exchanges of wine or beer for quality control purposes will not require replacement with identical packages;

In 3 VAC 5-30-30, subsection C.2., sales of nonalcoholic merchandise and alcoholic beverages will be allowed to appear on a single invoice, as long as the alcoholic beverage items are separately identified and totalled;

3 VAC 5-30-40 will be repealed, eliminating required deposits collected by wholesalers on containers sold to retailers;

In 3 VAC 5-30-60, subsection D, the maximum wholesale value of can or bottle openers given by a manufacturer, bottler, or wholesaler to a retailer, upon which advertising matter regarding alcoholic beverages appears, will be increased from \$5 to \$10, and in subsection H, the limits on the number of wine or beer brands which may appear on a table tent will be removed; and

In 3 VAC 5-30-70, subsection C.4. will be repealed, removing the restriction on wholesalers or manufacturers providing business entertainment involving an overnight stay; and in subsection C.5., the \$200 per day per person limit on the value of business entertainment provided by wholesalers or manufacturers to employees of retail licensees will be raised to \$400.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

The primary advantages of the proposed action are to alcoholic beverage manufacturers, wholesalers, and retailers. Manufacturers and wholesalers will be given limited additional opportunities for efforts to promote their products to retail establishments. Retailers will be able to receive merchandising assistance from manufacturers' and wholesalers' representatives on Sunday, and will be allowed to accept more valuable service items and business entertainment from manufacturers and wholesalers. There are no disadvantages to the public or the Commonwealth.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	There will be no additional cost to the state to implement and enforce the proposed regulation.
<b>Projected cost of the regulation on localities</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the</b>	Alcoholic beverage manufacturers, wholesalers, and retailers

<b>regulation</b>	
<b>Agency’s best estimate of the number of such entities that will be affected</b>	Approximately 14,000
<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	None—Any additional expenditure would be voluntary.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

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Alternatives considered included making no changes to the current regulations and further loosening the tied-house restrictions. The board felt that the current regulations were appropriately maintaining the required separation of the three tiers of the alcoholic beverage distribution system, but that the proposed changes would recognize increases in the costs of service items and business entertainment and eliminate the unnecessary Sunday merchandising restriction.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

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<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Hospitality & Travel Association	VHTA endorses, conceptually, the Board's action	

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

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The proposed regulatory action will have no impact on the institution of the family and family stability.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
5-30-10		Wholesalers may not perform merchandising activities on Sunday.	Sunday restriction removed, except where Sunday sales not allowed. Most retailers operate on Sunday, and there was no policy basis which could be identified for the restriction.
5-30-30		If sales of nonalcoholic merchandise are made at the same time as alcoholic beverages, separate invoices must be created.	Sales of nonalcoholic merchandise and alcoholic beverages may be recorded on a single invoice, as long as the items are separately identified and totaled.
5-30-40		Wholesalers must collect deposits on all beer containers from retailers	Provision repealed. Most of the deposits were designed to ensure the wholesaler would get the container back from the retailer. Wholesaler can still charge deposit, but the Commonwealth has no policy reason to mandate it.
5-30-60		Manufacturer, bottler, or wholesaler may give can or bottle openers of no more than \$5 value to retailers. Table tents given by manufacturer or wholesaler to retailer may list no more than 4 wines or 4 beers.	Maximum value of openers increased to \$10. Costs have gone up, and small increase does not endanger tier separation. Since table tents may already be supplied, there is no policy reason to limit the number of products listed.
5-30-70		No business entertainment involving overnight stay may be provided by manufacturers and wholesalers to retailers. Per day limit of \$200 per employee on wholesalers' and manufacturers' business entertainment of retailers' employees.	Limit on overnight stay repealed. Limit increased to \$400. Costs have increased, and per day limit is effective enough to allow removal of overnight stay limitation.